

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of DAVID ALLEN NEWTON,  
Minor.

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PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

DAVID ALLEN NEWTON,

Respondent-Appellant.

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UNPUBLISHED

January 24, 2012

No. 301557

Wayne Circuit Court

Family Division

LC No. 06-456091

Before: GLEICHER, P.J., and CAVANAGH and O'CONNELL, JJ.

MEMORANDUM.

Respondent appeals as of right an order placing him under the supervision of the Department of Human Services in a secure juvenile facility after a jury found him guilty of felonious assault, MCL 750.82, assault and battery, MCL 750.81, and possession of a firearm during a felony, MCL 750.227b. We affirm.

Respondent challenges only the trial court's jury instruction regarding possession of a firearm during a felony. The prosecution concedes on appeal that the court erroneously instructed jurors that respondent could be found guilty of MCL 750.227b if he possessed a firearm during the commission of a misdemeanor. However, the prosecution argues that reversal is not required because the jury also found respondent guilty of a felony, MCL 750.82, which was committed while he possessed the firearm.

Respondent concedes that he did not preserve this issue by objecting to the jury instructions. See *People v Carines*, 460 Mich 750, 761; 597 NW2d 130 (1999); *People v Gonzalez*, 256 Mich App 212, 225; 663 NW2d 499 (2003). Unpreserved constitutional issues, including erroneous jury instructions, are reviewed for plain error affecting the respondent's substantial rights. *Carines*, 460 Mich at 763, 767, 773-774. Omission or misstatement of one element of a crime during jury instructions does not warrant automatic reversal. *People v Kowalski*, 489 Mich 488, 502-503, 505 n 30; 803 NW2d 200 (2011).

The instructions constituted plain error because MCL 750.227b requires proof that the defendant committed or attempted to commit a felony. However, reversal is warranted only if the error resulted in a conviction of an innocent defendant or “seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings.” *Kowalski*, 489 Mich at 506, quoting *Carines*, 460 Mich at 763-764. Because defendant was also convicted of a felony, this standard is not met and reversal is not warranted. According to the evidence, there was only one continuous incident during which defendant possessed the firearm. Therefore, the outcome of the trial could not have been affected by the error. See *Kowalski*, 489 Mich at 505-506; *Carines*, 460 Mich at 763-764, 767, 770, 773-774.

Affirmed.

/s/ Elizabeth L. Gleicher  
/s/ Mark J. Cavanagh  
/s/ Peter D. O’Connell